

IN THE DRAWINGS

Please amend the drawings by replacing Sheet 3 with Replacement Sheet 3, enclosed herewith. No new matter is added in this replacement sheet.

REMARKS

Reconsideration of the present application, as amended, is respectfully requested. In the present application, as amended, claims 8-11, 41, 42, 45-47, and 48 are pending, and new claims 51-60 are offered. Applicant thanks Examiner Robert for identifying allowable subject matter in claim 42. In the Final Office Action, Examiner Robert withdrew from consideration claims 44, 45, 47, 49, and 50, as being allegedly drawn to a nonelected species. This withdrawal follows Examiner's previous withdrawal of claims 1-7 and 12-40. Claims 1-7, 12-40, 43-44, 49, and 50 have been canceled without prejudice to reconsideration in this or a continuing application. Entry of the above amendments and reconsideration of the pending claims is respectfully requested, as all the claims are allowable over the reference of record.

Referring first to Examiner Robert's treatment of the claims added in the previous Office Action response, it is submitted that the finality of the present Action should be withdrawn and at least claims 45 and 47 should be examined. The circular form recited in claim 45 is shown in FIG. 3. To clarify claim 45, its language is being changed to remove any doubt that it reads on FIGS. 1-3. Claim 47 recites two pedicle screws in a medialized orientation. That orientation is possible with the structure in FIGS. 1-3, as indicated on page 4 of the specification. Further, the pending Office Action is somewhat confusing, as it indicates that claim 41 is both withdrawn and rejected. It is assumed that the reference to claim 41 as withdrawn is an error, and therefore claim 41 is retained in this case. Since claims 45 and 47 read on FIGS. 1-3 among other things, and they have not yet been examined, the examiner is respectfully requested to withdraw the finality of this Action and act on those claims.

Turning now to the drawings, Examiner Robert made an objection because they do not include reference sign 41. A replacement sheet is attached to this amendment for replacement of

sheet containing Fig. 3. This replacement is labeled as such and contains a reference sign 41, as mentioned in the description. No new matter is added by this amendment as reference sign 41 was used in the original description and was inadvertently left out of the drawings. Applicant requests that the objection be reconsidered in light of this amendment and be withdrawn.

As to pending independent claims 8 and 41, Examiner Robert has rejected them as anticipated by the Yuan reference (U.S. Patent No. 5,437,669). That rejection is respectfully traversed on the grounds that the Yuan reference does not show all elements of either of those claims or claims dependent from them, and Applicant reiterates all prior arguments and incorporates them herein by reference. However, in order to expedite the prosecution process, applicant respectfully requests that Examiner consider the arguments that follow. Furthermore, while Applicant believes the claims are allowable for at least the reasons discussed in previous responses, and thus amendments are not necessary to overcome the references, amendments and new claims have been offered to place them in a condition the examiner would deem allowable. These amendments should be entered as the claims are allowable, and because they place the claims in better condition for any appeal that may become necessary.

In addition to previous arguments incorporated herein, it is noted that the pending Office Action based rejection on the claim that items 50 of Yuan “include what can be considered arms” (see page 4 of the Office Action). Respectfully, that is not the standard for anticipation. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP 2131 (citing cases, internal quotation marks omitted). Whether something “can be considered” something else is not sufficient for anticipation. Rather, the claim language must be “expressly” described in the reference, or necessarily and unambiguously follow from the reference’s description (in the case of inherent

disclosure), in order to be anticipated. The examiner should withdraw the rejection over Yuan because the proper standard for anticipation, and thus the examiner's burden, has not been met.

Examiner Robert further asserted that "claim 8 does not claim that the 'mounting bracket' is a separate piece from the cross support" (see page 4), suggesting in this way a view that such a changed claim would not be anticipated. Although it is respectfully submitted that claim 8 is allowable as it stood before this amendment, it has been amended to clarify that the mounting bracket is physically separate from the cross support. Applicant agrees with the examiner that that feature, among others, is not shown by the Yuan reference. The reference does not disclose or show its connector body 52 as being a separate piece from its items 50, 53 and 54. Support for the amendment is found in Figs. 1-3 and the associated text. It is not conceded that the amendment to claim 8 limits its scope, and therefore it and its dependent claims should receive the full scope permitted by their language, including equivalents. Claim 8 and dependent claims 9-11 are thus in a form that should be deemed allowable by the examiner.

Claims 9-11 have also been amended. Claim 9 has been amended to clarify the scope of the claim, and claims 9-10 have been amended to remove a word and ensure clear antecedent basis from claim 8.

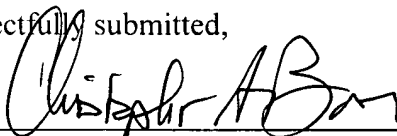
Turning now to claim 42, Examiner Robert objected to it as being dependent upon a rejected base claim but stated it would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 42 consequently has been rewritten in independent form to explicitly recite all of the limitations of its original base claim 41. Thus, claim 42 and dependent claims 43, 46, and 48 are allowable. No narrowing of claim 42 has occurred, and thus its scope has not been limited. Applicant intends that claim 42 and its dependent claims have the full scope permitted by their language, including equivalents.

With the cancellation of several claims, new independent claim 51 and further dependent claims are being offered. Claim 51 includes the allowable subject matter of claim 42, and is thus allowable for at least that reason. The new dependent claims depend from claims that are in allowable form, and are therefore allowable for at least that reason. Further, far fewer claims have been cancelled without prejudice (40) than have been added (10).

It should be understood that the above amendments and remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the Final Office Action but are simply provided to address the rejections made in the Final Office Action in the most expedient fashion. Applicant reserves the right to later contest positions taken by the examiner that are not specifically addressed herein. Applicant further incorporates all prior arguments made in this case and respectfully request that they be reconsidered.

In conclusion, Examiner Robert is respectfully requested to reconsider this application and enter the above amendments in light of the foregoing remarks. Pending claims 8-11, 41-42, 46, and 48, and new claims 51-60, are allowable for at least the reasons noted above. A Notice of Allowance in this case is hereby respectfully requested. The examiner is invited to call the undersigned attorney if there are any further issues to be resolved.

Respectfully submitted,

By: 

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